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Michael Best & Friedrich LLC
Suite 1700
401 North Michigan Avenue
Chicago, IL 60611

EXAMINER

PIAZZA CORCORAN, GLADYS JOSEFINA

ART UNIT

PAPER NUMBER

1733

DATE MAILED: 09/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,527

Applicant(s)

WRIGHT ET AL.

Examiner

Gladys J Piazza Corcoran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-14, drawn to a method of making a reclosable plastic bag and a method of sealing a portion of a zipper to a web, classified in class 156, subclass 66.
 - II. Claims 15-21, drawn to an apparatus for sealing a portion of a zipper tape to a web section, classified in class 156, subclass 538.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by a materially different apparatus for example, the process of claim 1 does not require an elevator with a platform, a means for depositing a zipper tape on the platform, or a sealing head; and the process of claim 6 does not require a means for depositing the zipper tape on the platform as required by the apparatus claims. Additionally, the apparatus as claimed can be used to practice another and materially different process such as the sealing of two webs or the sealing of a ribbon tape to a web. It is noted, rejoinder will be considered upon indication of allowable subject matter and the basis thereof.

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3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Robert S. Beiser on September 9, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

6. The disclosure is objected to because of the following informalities: The Specification should include a brief description of all the drawings, currently there is no description for the Figure 11A.

Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.

Appropriate correction is required.

Claim Objections

7. Claims 6-14 are objected to because of the following informalities: Claim 6 recites "An method" which should be --A method--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claim 1 recites in the preamble, "A method of making a reclosable plastic bag." However, the body of the claim does not complete the steps of making a reclosable bag. It is suggested to amend the claim to include the steps of sealing the selected portion of the zipper tape to a web to form a reclosable plastic bag or forming a reclosable plastic bag with the sealed zipper tape and web material.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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12. Claims 6-12, 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Blohowiak et al. (US Patent No. 6,003,582).

Blohowiak discloses a method for sealing a portion of a zipper tape (170) to a web (28) by providing an elevator (turret 308) having a platform (326) for receiving the portion of zipper tape (column 8, lines 7-46), depositing the portion of zipper tape onto the platform (column 8, lines 11-13), positioning a section of the web above the platform (column 6, lines 12-20; column 10, lines 12-17), positioning a sealing head (352) over the web section for heating the web section (column 10, lines 18-20), and elevating the platform towards the web section until the portion of zipper tape comes into contact with the web section (the zipper platform 326 is elevated from a loading station 340 to a sealing station 348 where the zipper comes into contact with the film), thereby forming a seal between at least a portion of the portion of the zipper tape and the web section (column 10, lines 18-23).

As to claim 7, the sealing head is in contact with the web section when the portion of the zipper tape comes into contact with the web section (column 10, lines 18-23). As to claim 8, the web section is perforated (column 5, lines 59-65). As to claim 9, the perforation is performed by a knife positioned above the web section (cutter 124 column 5, line 64 to column 6, line 11; see figure 1). As to claim 10, the web section is perforated prior to the portion of zipper tape being sealed to the web section (column 5, line 58 to column 6, line 20; see figure 1). As to claims 11 and 12, the seal is substantially airtight and watertight (column 10, lines 34-44). As to claim 14, the method is repeated to seal a plurality of zipper tapes to the web and further comprising

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the step of winding the resulting web onto a winder (column 2, lines 3-13; column 12, lines 45-48).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

15. Claims 1-5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blohowiak (US Patent No. 6,003,582) as set forth above in view of Ishikawa (US Patent No. 4,594,925).

Blohowiak shows a method of making a reclosable plastic bag by feeding a zipper tape having at least one splotched portion and cutting the zipper tape in the splotched portion to form an individual zipper (column 8, lines 7-34). It is known in the mechanical arts to provide sensors for sensing material in order to cut the material at a

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desired location as an equivalent alternative to “traveling” the material as far as it can to actuate the cutter as shown in Blohowiak (column 8, lines 16-19) and additionally in order to conform with differing zipper lengths for more accurate cutting. For example, Ishikawa discloses it is known in the cutting art for cutting fastener strips to provide a sensor (detecting station 1) for detecting a thinner portion or gap area of the material to be cut and a cutter (cutting station 3) for cutting the material at the thinner portion or gap area in correspondence to output from the sensor (column 2, lines 8-59). More specifically, the detector detects the thinner portion or gap of the fastener material and actuates the cutter to cut the material in the location of the thinner portion or gap. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the method and apparatus of cutting and sealing zipper lengths in Blohowiak with a sensor for detecting the splotched portion (thinner portion or gap) of the zipper and cutting the zipper in response to a signal from the sensor as it is well known in the cutting arts to provide a sensor and a cutter in correspondence with the sensor in order to cut the material at the location of the splotched portion as exemplified by Ishikawa as an equivalent alternative to the method in Blohowiak and additionally in order to conform with differing zipper lengths for more accurate cutting.

As to claims 2 and 3, the sensor in Ishikawa determines thickness of the thinner area or gap area by comparing the thickness to a reference predetermined thickness (the thicker portions of the material). Furthermore, it is well known in the art to provide sensors for determining material thickness and it would have been well within the purview of one of ordinary skill in the art to use such sensors for detecting the splotched

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portions of the zippers, only the expected results would be attained. As to claim 4, Blohowiak discloses splotching the zipper tape multiple times to create a series of splotches along the length of the zipper tape (column 7, lines 20-26). As to claim 5, Blohowiak discloses sealing the selected portion of the zipper tape to a web (column 10, lines 18-21).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gladys J Piazza Corcoran whose telephone number is (703) 305-1271. The examiner can normally be reached on M-F 8am-5:30pm (alternate Fridays off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Ball can be reached on (703) 308-2058. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


Gladys J Piazza Corcoran
Examiner
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GJPC